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No. 71-1188

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

CITIES SERVICE OIL COMPANY,
Petitioner,

vs.

CARL F. MATZEN, *et al.*,
Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

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PETITION FOR REHEARING

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PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Cities Service Oil Company, petitioner herein, respectfully petitions for a rehearing of the order of the Supreme Court of the United States denying the Petition for Writ of Certiorari entered in this case on June 7, 1972.

JURISDICTION

This petition is filed within 25 days of the Order of the Court entered on June 7, 1972. This Court's jurisdiction is invoked under 28 U.S.C., Sec. 1254(1) and Rule 58(2) of the Rules of the Supreme Court of the United States.

I

The Court of Appeals for the District of Columbia stated in its decision it was "not persuaded that the maintenance in either state or Federal courts of contract (lease) controversies between royalty owners and lessees will undercut the Federal regulatory system."[1] This petitioner disagrees and urges this honorable Court to grant rehearing.

By referring to the definition and the examples of royalty described in the Presiding Examiner's Initial Decision on Jurisdiction over Royalty Owners, one conclusion of this Court's decision is that the Natural Gas Act covers only 3/4 to 7/8 of the natural gas in interstate commerce. By allowing the existing court opinion to stand, this Court is in effect saying the Natural Gas Act does not cover 1/8 to 1/4 of the natural gas in interstate commerce.[2]

II

The State of New Mexico has already placed the Federal Power Commission on notice that it might withdraw from interstate commerce its royalty portion of any gas produced under leases granted by it. It has recently enacted legislation that would allow it to retroactively amend and modify, by stipulation with the lessee, outstanding oil and gas leases issued by the Commissioner of Public Lands to provide that the State can "negotiate and enter into agreements for the sale or exchange of its natural gas royalty *in kind.*"[3] In its brief in Docket No. AR70-1, it stated that the decision of the "United States Federal District Court in the District of Columbia in the case of the *Federal Power Commission v. Mobil*" was one of the main factors that "precipitated the legislature of the State of New Mexico in its 1972 session to enact Senate Bill 61."[4]

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1 Mobil Appendix p. 35

2 Mobil Appendix, pp. 91-93

3 Initial Brief of the State of New Mexico, Intervenor Before the Federal Power Commission (March 11, 1972) pp. 25-28 Docket No. AR70-1 Permian Basin Area Rate Proceeding. Emphasis by New Mexico

4 Supra p. 27, see New Mexico Statutes 7-11-54.1

This petitioner is clearly aware that the Federal Power Commission in the Presiding Examiner's Initial Decision on Jurisdiction over Royalty Owners on July 23, 1968, specifically excluded "any question as to its jurisdiction for royalty interest owned by a State, the United States, or their agencies."[5] However, this petitioner is of the opinion that the State of New Mexico correctly prophesies the ultimate result if the reversal of the Federal Power Commission's Order in this case by the Court of Appeals is allowed to stand. The State of New Mexico said in its conclusion to Section 4 of its brief in Docket AR70-1:

> "The logical end result of this approach by both the State government and the Federal government *would be a similar demand by royalty owners under fee leases.*"[6] (Emphasis supplied)

III

On June 30, 1972, Mobil Oil Corporation (Mobil) filed a Petition for Rehearing upon denial of the petition in No. 71-1169. Cities Service Oil Company concurs with and adopts the issues raised by Mobil in its Petition for Rehearing with respect to the decision of *Federal Power Commision v. Louisiana Power & Light Co.*, U.S. ___, (Nos. 71-1016, *et al.* October Term 1971). For the purpose of brevity, Cities shall not further reiterate what is already set forth in that pleading with respect to the *L.P. & L.* decision. However, in passing one cannot help but compare this Court's brief statements in the *L.P. & L.* decision on the matter of primary jurisdiction with the present cases.

In the *L.P. & L.* case this Court has overruled a decision of the Court of Appeals for the Fifth Circuit to the effect that the Federal Power Commission did not have primary jurisdiction over whether or not the Green System was subject to its jurisdiction.

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5 Mobil Appendix p. 89
6 Supra Note 3, p. 28

In the *Mobil v. Matzen, et al.* cases this Court by not speaking has failed to take an important and necessary step to clarify and add needed guidance to correct the procedural maze which results from the decision of the Court of Appeals for the District of Columbia, when it reversed the Order of the Federal Power Commission which would have applied the Commission prescribed rates as the ceiling applicable to the royalty owners' interest.

The decision to deny certiorari was issued in the *Mobil Oil Corporation v. Carl F. Matzen, et al* cases on the same date as the *L.P. & L.* decision. The cases all involve the same Federal Agency.

This petitioner believed that the complainants before the Federal Power Commission followed the very procedure stated by the Court of Appeals for the District of Columbia in its opinion in the instant cases wherein it stated:

> "The court handling the contract clause could avoid becoming embroiled in the ascertainment of the Federal ceiling by referring that issue to the FPC, invoking the broad and supple doctrine of primary jurisdiction, see *J. M. Huber Corp. v. Denham*, supra, 367 F.2d at 111, cf. *Brawner Building Inc. v. Shelyn*, ____ U.S. App. D.C. ___, 442 F.2d 847 (1971). This would bring the FPC into the dispute between the royalty owner and the lessee producer, but the FPC would be acting properly on reference from the courts, rather than unduly stretching its jurisdiction and the statutory mandate to extend to royalty owners."[7]

The decision of the Court of Appeals for the District of Columbia, in reversing the Commission's exercise of jurisdiction over the royalty owners' interest, improperly applied the principles of construction of the Natural Gas Act as set forth in *United Gas Improvement Company v. Continental Oil Company.*[8]

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7 Mobil Appendix p. 36 (footnote omitted)
8 381 U.S. 392 (1965)

The unavoidable conflict between producing states and consuming states that will ultimately occur as a result of this decision will create contradictory regulations that cannot be resolved, to the detriment of the ultimate consumer. The Court of Appeals was in error when it overturned the Commission's finding of jurisdiction over the royalty interest in the instant case.

CONCLUSION

For the foregoing reasons, as well as those set forth in this petitioner's original petition for certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, and grant this petition.

Respectfully submitted,

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